IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.: 004770.00261
Martin Zilliacus	
Serial No.: 10/777,284	Group Art Unit: 2452
Filed: November 5, 2004	Examiner: DOAN, DUYEN MY
For: Apparatus and Associated Method for Downloading an Application With a Variable Lifetime to a Mobile Terminal	Confirmation No.: 5467

APPEAL BRIEF

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Sir:

This is an Appeal Brief filed in support of Appellants' Notice of Appeal, filed concurrently herewith. Appeal is taken from the Final Office Action mailed April 9, 2009 (hereafter, "Final Office Action").

Please charge any fees to our Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

REAL PARTY IN INTEREST
37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is Nokia Corporation of Espoo, Finland.

RELATED APPEALS AND INTERFERENCES
37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

STATUS OF CLAIMS
37 C.F.R. § 41.37(c)(1)(iii)

Claims 23-103 are pending and stand rejected. Appellants hereby appeal the rejection of claims 23-103.[1]

STATUS OF AMENDMENTS
37 C.F.R. § 41.37(c)(1)(iv)

None.

SUMMARY OF CLAIMED SUBJECT MATTER
37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellants do not intend to limit the claims to those embodiments or examples; all references to the specification and drawings are illustrative unless otherwise explicitly stated.

Independent Claim 23

Independent claim 1 recites a method [FIG. 1; FIG. 2; page 5 lines 19-26] comprising:

connecting a first mobile terminal [FIG. 1 element 110] to an application database [FIG. 1 element 120] through a cellular communication network [FIG. 1 element 124], the application database containing at least one application having a variable selectable lifetime [FIG. 1 element 126; page 8 lines 7-16; page 9 lines 12-24];

receiving a user-specified choice of the at least one application for downloading to the first mobile terminal [FIG. 3 step 312; FIG. 4 step 414; page 10 lines 21-23];

providing the application database with information identifying a user of the first mobile terminal [FIG. 4 step 424; page 12 lines 9-16];

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[1] Note: claim 100 was indicated as being rejected, but no explanation or basis for the rejection was provided.

receiving a user-specified selection of a variable lifetime for the chosen application, during which lifetime the chosen application is executable [FIG. 3 step 314; FIG. 4 step 418; page 10 lines 24-28];

downloading the chosen application from said application database to the first mobile terminal [FIG. 3 step 318; FIG. 4 step 426; page 11 lines 6-9] ; and

storing indicia of the selected lifetime for the chosen application and of the information identifying the user, wherein the stored indicia corresponds to the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user [FIG. 4 step 424; page 6 lines 14-19 and 32-33; page 12 lines 9-29].

Dependent Claim 27

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 27, which is argued separately below.

Dependent claim 27 recites the method of claim 26, wherein the short-range connection is an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 30

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with

this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 30, which is argued separately below.

Dependent claim 30 recites the method of claim 23, further comprising the steps of:

receiving in the application database a request from the user for a subsequent downloading of a previously-downloaded application [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21];

determining whether lifetime remains by reference to the stored indicia of the selected lifetime for a previously-downloaded application for the user [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21]; and

downloading the application a subsequent time, if it is determined that at least a portion of the selected lifetime remains for the requested application [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21].

Dependent Claim 31

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 31, which is argued separately below.

Dependent claim 31 recites the method of claim 30, wherein the request is received from a second mobile terminal [page 9 lines 6-9; page 12 line 33 to page 13 line 3].

Dependent Claim 32

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 32, which is argued separately below.

Dependent claim 32 recites the method of claim 30, wherein the subsequent downloading comprises downloading the application to a second mobile terminal [page 9 lines 6-9; page 12 line 33 to page 13 line 3].

Dependent Claim 37

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 37, which is argued separately below.

Dependent claim 37 recites the method of claim 36, wherein the short-range connection is an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Independent Claim 41

Independent claim 41 recites an apparatus comprising:

a network infrastructure [FIG. 1 element 124] configured to communicate with at least one mobile terminal [FIG. 1 element 110; page 8 lines 7-16; page 9 lines 12-24];

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an application database [FIG. 1 element 120] containing at least one downloadable application, the application having a user-selectable variable lifetime during which the application is permitted to remain executable by an identified user [page 8 lines 7-16; page 9 lines 12-24];

a downloading server [FIG. 1 element 118] configured to communicate through the network infrastructure [FIG. 1 element 124] and configured to detect a request containing information identifying a user to download a chosen application of the at least one application contained in the application database, the downloading server being further configured to obtain the application from the application database, and to download the application to the at least one mobile terminal [FIG. 1 element 110; page 6 lines 12-21]; and

an application-license database [FIG. 1 element 122] coupled to the downloading server, the application-license database configured to store the selected variable lifetime and the user-identifying information [FIG. 2 elements 234, 23; page 6 lines 12-21];

wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application, wherein the downloading server is further configured to download said application if the user has application lifetime remaining for the requested application [page 6 lines 12-21; page 13 lines 4-21].

Dependent Claim 42

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with

this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 42, which is argued separately below.

Dependent claim 42 recites the apparatus of claim 41 wherein said downloadable application is preprogrammed with the selected lifetime, wherein the downloadable application is configured to delete itself from the at least one mobile terminal when the selected lifetime expires [FIG. 3 step 322; [page 6 lines 5-11].

Independent Claim 45

Independent claim 45 recites an apparatus comprising:

a central processing unit (CPU) [FIG. 1 element 214; page 8 lines 22-30];

a memory unit coupled with the CPU and configured to store at least one application [FIG. 1 element 112; page 8 lines 22-30];

an application requestor coupled with the CPU and configured to generate requests to download a variable-lifetime application from an application database [page 10 lines 21-30];

a lifetime selector coupled with the CPU and configured to select a variable lifetime applicable to a downloaded application [page 10 lines 21-30];

a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application [page 10 lines 21-30]; and

an application disabler coupled with the CPU and configured to disable an application [page 10 lines 21-30; page 14 line 29 to page 15 line 3];

wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains [page 10 lines 21-30; page 14 line 29 to page 15 line 3].

Dependent Claim 47

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 47, which is argued separately below.

Dependent claim 47 recites the apparatus of claim 45, wherein the application disabler is configured to delete an application with lifetime remaining in order to free storage space in the memory unit [page 5 lines 19-26].

Independent Claim 53

Independent claim 53 recites a method comprising:

receiving a selected choice of a first application from a mobile terminal [FIG. 1 element 110], the first application being one of a plurality of applications [FIG. 1 element 126; FIG. 3 step 312; FIG. 4 step 414; page 6 lines 22-34]; and

receiving the first application via a wireless network [FIG. 1 element 116], the first application being configured to become unavailable for use on the mobile terminal upon either

expiration of a time period selectable by a user of the mobile terminal [page 6 lines 7-34; page 10 lines 21-33] , or

use of the first application a number of times selectable by a user of the mobile terminal [page 6 lines 7-34; page 10 lines 21-33].

Dependent Claim 56

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 56, which is argued separately below.

Dependent claim 56 recites the method of claim 55, wherein the short-range wireless communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 59

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 59, which is argued separately below.

Dependent claim 59 recites the method of claim 53, wherein the first application is configured to become unavailable by becoming non-functional [page 10 lines 27-29].

Dependent Claim 60

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 60, which is argued separately below.

Dependent claim 60 recites the method of claim 53, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself [page 6 lines 8-11; page 11 lines 16-24].

Dependent Claim 61

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 61, which is argued separately below.

Dependent claim 61 recites the method of claim 60, wherein the first application is configured to delete only executable code [page 11 lines 16-24].

Dependent Claim 62

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 62, which is argued separately below.

Dependent claim 62 recites the method of claim 60, wherein the first application is configured to retain customized settings in the mobile terminal [page 11 lines 16-24].

Dependent Claim 63

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 63, which is argued separately below.

Dependent claim 63 recites the method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first application if time remains in the predetermined time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 64

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 64, which is argued separately below.

Dependent claim 64 recites the method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first application if the first application has been used less than the predetermined number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-34].

Dependent Claim 66

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 66, which is argued separately below.

Dependent claim 66 recites the method of claim 53, further comprising:

making an initial payment for the first application [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving another selection of the first application [page 6 lines 12-21];

again receiving the first application if there is time remaining in the user-selected time period [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment [page 6 lines 12-21; Abstract].

Dependent Claim 67

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 67, which is argued separately below.

Dependent claim 67 recites the method of claim 53, further comprising:

making an initial payment for the first application [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving another selection of the first application [page 6 lines 12-21];

again receiving the first application if the first application has been used less than the user-selected number of times [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first application, wherein

the amount of said additional payment is reduced from the amount of the initial payment [page 6

lines 12-21; Abstract].

Independent Claim 74

Independent claim 74 recites a method comprising steps of:

receiving a choice of a first ringing tone at a mobile terminal, the first ringing tone being

one of a plurality of ringing tones [page 4 lines 25-27; FIG. 1 element 110; FIG. 1 element 126;

FIG. 3 step 312; FIG. 4 step 414; page 6 lines 22-34]; and

receiving the first ringing tone via a wireless network [FIG. 1 element 116], the first

ringing tone being configured to become unavailable for use on the mobile terminal upon either

expiration of a user-selectable time period [page 6 lines 7-34; page 10 lines 21-

33], or

use of the first ringing tone a user-selectable number of times [page 6 lines 7-34;

page 10 lines 21-33].

Dependent Claim 77

While the PTO regulations do not require a summary of claimed subject matter for

dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with

this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a

summary of dependent claim 77, which is argued separately below.

Dependent claim 77 recites the method of claim 76, wherein the short-range wireless

communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 80

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 80, which is argued separately below.

Dependent claim 80 recites the method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone [page 4 lines 25-29; page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first ringing tone if there is time remaining in the user-selected time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 81

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 81, which is argued separately below.

Dependent claim 81 recites the method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone [page 4 lines 25-29; page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 83

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 83, which is argued separately below.

Dependent claim 83 recites the method of claim 74, further comprising:

making an initial payment for the first ringing tone [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving a re-selection of the first ringing tone [page 6 lines 12-21];

again receiving the first ringing if there is time remaining in the user-selected time period [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment [page 6 lines 12-21; Abstract].

Dependent Claim 84

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 84, which is argued separately below.

Dependent claim 84 recites the method of claim 74, further comprising:

making an initial payment for the first ringing tone [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving a re-selection of the first ringing tone;

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment [page 6 lines 12-21; Abstract].

Independent Claim 86

Independent claim 86 recites apparatus comprising:

a memory [FIG. 1 element 112; page 8 lines 22-30]; and

a central processing unit (CPU) [FIG. 2 element 214; page 8 lines 22-30], wherein the apparatus is configured to perform

transmitting over a wireless communication network [FIG. 1 element 116] a choice of a first application, the first application being one of a plurality of applications [FIG. 3 step 312; page 10 lines 21-23],

receiving the first application via the wireless network, the first application being configured to become unavailable for use on the apparatus upon either

expiration of a user-selectable time period [page 6 lines 7-34; page 10 lines 21-33], or

use of the first application a user-selectable number of times [page 6 lines 7-34; page 10 lines 21-33], and

storing the first application in the memory [page 6 lines 1-11].

Dependent Claim 89

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 89, which is argued separately below.

Dependent claim 89 recites the apparatus of claim 88, wherein the short-range wireless communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 92

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 92, which is argued separately below.

Dependent claim 92 recites the apparatus of claim 86, wherein the first application is configured to become unavailable by becoming non-functional [page 10 lines 27-29].

Dependent Claim 93

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 93, which is argued separately below.

Dependent claim 93 recites the apparatus of claim 86, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself [page 6 lines 8-11; page 11 lines 16-24].

Dependent Claim 94

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 94, which is argued separately below.

Dependent claim 94 recites the apparatus of claim 93, wherein the first application is configured to delete only executable code [page 11 lines 16-24].

Dependent Claim 95

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 95, which is argued separately below.

Dependent claim 95 recites the apparatus of claim 93, wherein the first application is configured to retain customized settings in the apparatus [page 11 lines 16-24].

Dependent Claim 96

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 96, which is argued separately below.

Dependent claim 96 recites the apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10], and

again receive the first application if time remains in the user-selected time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 97

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Applicants nevertheless submit a summary of dependent claim 97, which is argued separately below.

Dependent claim 97 recites the apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receive the first application if the first application has been used less than the user-selected number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
37 C.F.R. § 41.37(c)(1)(vi)

Claims 23-49 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 23-41, 43-44, 53-58, 63-67, 69-70, 72-92, 96-97, and 101-103 stand rejected as being unpatentable over Lin et al. (U.S. Patent 6,366,791) in view of Griswold (U.S. Patent 5,940,504).

Claims 42, 45-49, 59-62, 68, 71, 93-95, and 98-99 stand rejected as being unpatentable over Lin in view of Griswold and further in view of Mankoff (U.S. Patent 6,385,591).

Applicant appeals the rejection of all of the above-identified claims.

ARGUMENT
37 C.F.R. § 41.37(c)(1)(vii)

A.   Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 23-49 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. According to the office action, in independent claim 23 and 45, the recitation of "selection of a variable lifetime" is unclear because it is unclear whether this is the same lifetime previously introduced in the claims. Also according to the office action, in independent claim 23 and 45, "the selected lifetime" is indefinite because it is unclear what "selected lifetime" is intended.

Applicant respectfully submits that it is reasonably clear in both independent claims 23 and 45 that the application has an attribute – a "variable selectable lifetime" and, later in the claim, there is a user-specified "selection" of a specific "variable lifetime." In other words, each application has a lifetime that is both variable and selectable – the first time it is introduced in the claim, no user has specified what a value for the lifetime will be, only that it is variable and

selectable. Later, the claim recites that there is a specific user-specified "selection" of a particular variable lifetime for the chosen application.

Applicant respectfully submits that there is no ambiguity in these claims. The first recitation of "a variable selectable lifetime" indicates that the lifetime is both variable and selectable, but does not specify what that lifetime is. The later recitation of "a variable lifetime" specified by the user is referring to the specific lifetime that is chosen by the user – i.e., what specific lifetime has been selected by the user. The office action seems to imply that the first introduction of "a variable selectable lifetime" refers to a specific value that is then later "selected" by the user. But the first introduction merely points out that the application has an attribute – a variable selectable lifetime – for which no user-specified specific selection has yet been made. Accordingly, the rejection of these claims is respectfully traversed.

As to the recitation of "the selected lifetime" in independent claims 23 and 45, Applicant submits that there is no ambiguity as to what selected lifetime was intended – there is only one selected lifetime previously introduced into the claim – "a user-specified selection of a variable lifetime" – i.e., the lifetime selected by the user. The rejection of these claims is improper as there is no ambiguity.

B.   Rejection of All Claims Based on Lin in View of Griswold

Claims 23-41, 43-44, 50-58, 63-67, 69-70, 72-92, 96-97, and 101-103 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin (U.S. Patent No. 6,366,791) in view of Griswold (U.S. Patent No. 5,940,504). According to the office action, Lin discloses receiving a user-selected application and transmitting it to a mobile terminal, but does not disclose that the application is configured to become unavailable for use on the mobile terminal upon either

expiration of a predetermined time period or use of the application a predetermined number of times. The office action states that Griswold teaches that the application is configured to become unavailable for use on the mobile terminal under the recited conditions. According to the office action, it would have been obvious to combine Griswold with Lin to include a life time for an application for the purpose of managing the licensed product (Office Action at p. 7).

Applicant respectfully submits that no proper reason has been shown for combining Griswold, which relates to a license management system for computer software, with the mobile ring-tone downloading system of Lin. First of all, the cited portion of Lin (col. 3 lines 31-48) says nothing about managing licensed products. In fact, nowhere does Lin use the term "license" or any similar term. Instead, Lin describes downloading (for a fee) one or more ringtones to a mobile phone (see col. 3 lines 58-64). There would be no apparent reason to modify the fee-based ringtone downloading scheme of Lin to incorporate a software license management system like Griswold. The office action identifies no particular reason for modifying the fee-for-download ringtone scheme of Lin to incorporate a software license scheme as disclosed in Griswold. Accordingly, Applicant submits that the proposed combination is improper and the claims are not properly rejected on this basis.

C.   Independent Claims 23, 41, 53, 74, and 86

Even if Lin and Griswold were combined as suggested, the combination would not disclose the features of these claims. The office action points to Griswold at column 7 lines 3-27 and 35-46 as disclosing the feature of selecting a lifetime for the chosen application. But that portion merely discloses a fixed termination date for the license, not a "selection" of the lifetime. Independent claim 23 clearly recites a "user-specified selection of a variable lifetime" for the chosen

application. Independent claim 41 similarly recites a "user-selectable variable lifetime" for the chosen application. Independent claim 53 recites "a time period selectable by a user of the mobile terminal." Independent claims 74 and 86 recite "expiration of a user-selectable time period" and "a user-selectable number of times" that the ringing tone can be used. Nowhere does Lin or Griswold disclose or suggest that <u>the user</u> can select the lifetime or number of uses that the application will remain operable. Consequently, the rejection of these claims on the basis of Lin and Griswold is respectfully traversed.

D.   Dependent Claims 27, 37, 56, 77, and 89

As to dependent claims 27, 37, 56, 77, and 89, each of which recites an infrared connection, the office action cites Lin at col. 1 lines 15-24. Applicant has carefully reviewed Lin but cannot find the word "infrared" or "IR" anywhere in Lin. The rejection of these claim based on Lin is respectfully traversed. Applicant made this same argument in the previous response but it was ignored.

E.   Dependent Claims 30, 63, 64, 66, 67, 80, 81, 83, 84, 96, and 97

As to dependent claims 30, 63, 64, 66, 67, 80, 81, 83, 84, 96, and 97, each of which recites downloading the application (or ringtone) a subsequent time if at least a portion of the selected lifetime (or number of uses) remains, the office action cites Griswold at col. 9 lines 1-14 for this feature. Applicant has carefully studied the cited portion of Griswold but can find no such feature. Accordingly, the rejection of these claims is traversed. Applicant made this same argument in the previous response but it was ignored.

F.   Dependent Claims 31 and 32

Regarding dependent claims 31 and 32, which recite that the request for a subsequent download comes from the user at a second mobile terminal, the office action cites Lin at col. 2 lines 32-41 for this feature. Applicant has carefully studied the cited portion but can find no such disclosure. Applicant made this argument in the previous response but it was ignored.

G.   Independent Claim 45 and Dependent Claims 42, 59, 60, 92, 93

Claims 42, 45-49, 59-62, 68, 71, 93-95, and 98-99 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Griswold and further in view of Mankoff (U.S. Patent No. 6,385,591). According to the office action, Mankoff discloses the concept of expiring content becoming non-functional. The office action states that it would have been obvious to combine Mankoff with Lin and Griswold "for the purpose of preventing the unauthorized use of the content." **(Note: dependent claim 100 was not rejected anywhere in the office action, yet it was not indicated as being allowable. Applicant pointed this out in the previous response but the error was repeated in the final office action**.)

Mankoff describes a system for organizing coupons, far afield from Lin or Griswold. The cited portion of Mankoff (col. 4 lines 35-37) merely explains that expired coupons can be deleted from the system. Applicant submits that no proper reason has been given for combining the ring-tone downloading system of Lin and the content-licensing scheme of Griswold with a coupon organizing system like Mankoff. Accordingly, the proposed combination is improper.

Even if Mankoff were properly combined with Lin or Griswold, the combination would not result in the cited claim limitations. For example, the fact that coupons are "automatically deleted" in Mankoff does not disclose the claimed limitation of an application "configured to

delete itself" (dependent claim 42) or "configured to become unavailable by becoming non-functional" (dependent claims 59 and 92) or "configured to become unavailable by automatically deleting at least a portion of itself" (dependent claims 60 and 93). At any rate, the coupons in Mankoff are not "configured to become non-functional" – they are deleted from the system by another process. The coupons themselves are not "configured" to do anything. Therefore, the rejection of these claims is respectfully traversed.

H.   Dependent Claim 47

As to dependent claim 47, which recites that the application disabler is "configured to delete an application with lifetime remaining in order to free storage space in the memory unit," the office action points to Mankoff at col. 4 lines 34-36. However, the cited portion of Mankoff merely explains that "Preferably, expired coupons are automatically deleted from storage, although the contact information is preferably maintained for future use." Clearly, this does not disclose deleting <u>unexpired</u> coupons (i.e., those "with lifetime remaining" as claimed). Therefore, this rejection is respectfully traversed.

I.   Dependent Claim 61 and 94

As to dependent claims 61 and 94, which recite that the "application is configured to delete only executable code," the office action again relies on Mankoff at col. 4 lines 34-36. First of all, the coupons in Mankoff are comprised entirely of data, not executable code. See FIG. 3 (contents of the virtual coupon) and col. 3 at lines 50-65. So, Mankoff does not delete only "executable code" by automatically deleting coupons. Second, the coupons themselves are not "configured" to do anything – they are passive. Instead, other components of Mankoff's system perform the automatic deletion. For these reasons, this rejection is improper.

J.   Dependent Claims 62 and 95

Dependent claims 62 and 95, which recite that the first application is configured to retain customized settings in the mobile terminal, was improperly rejected on the basis that the cited prior art discloses retaining customized settings in the mobile terminal. Applicant has carefully studied the cited references but can find no such disclosure. Accordingly, the rejection of these claims is respectfully traversed. Applicant made this argument in the previous response but it was ignored.

CONCLUSION

For all of the foregoing reasons, Appellants respectfully submit that the final rejection is improper and should be reversed.

Respectfully submitted,

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CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

23.   A method comprising:

connecting a first mobile terminal to an application database through a cellular communication network, the application database containing at least one application having a variable selectable lifetime;

receiving a user-specified choice of the at least one application for downloading to the first mobile terminal;

providing the application database with information identifying a user of the first mobile terminal;

receiving a user-specified selection of a variable lifetime for the chosen application, during which lifetime the chosen application is executable;

downloading the chosen application from said application database to the first mobile terminal; and

storing indicia of the selected lifetime for the chosen application and of the information identifying the user, wherein the stored indicia corresponds to the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user.

24.   The method of claim 23, wherein the step of downloading the chosen application is performed over a wireless connection.

25.   The method of claim 24, wherein the step of downloading over a wireless connection is performed through the cellular communication network.

26.   The method of claim 24, wherein the step of downloading over a wireless connection is achieved by way of a short-range connection.

27.   The method of claim 26, wherein the short-range connection is an infrared connection.

28.   The method of claim 23, wherein the indicia is stored in an application-license database in connection with the application database.

29.   The method of claim 23, wherein the information identifying the user is based on Subscriber Identity Module (SIM) information.

30.   The method of claim 23, further comprising the steps of:

receiving in the application database a request from the user for a subsequent downloading of a previously-downloaded application;

determining whether lifetime remains by reference to the stored indicia of the selected lifetime for a previously-downloaded application for the user; and

downloading the application a subsequent time, if it is determined that at least a portion of the selected lifetime remains for the requested application.

31.   The method of claim 30, wherein the request is received from a second mobile terminal.

32.   The method of claim 30, wherein the subsequent downloading comprises downloading the application to a second mobile terminal.

33.   The method of claim 30, further comprising the step of refusing the request for subsequent downloading if the determination indicates that lifetime has expired in the stored indicia for said user.

34.   The method of claim 30, wherein the step of downloading is performed over a wireless connection.

35.   The method of claim 34, wherein the step of downloading over a wireless connection is performed through the cellular communication network.

36.   The method of claim 34, wherein the downloading over a wireless connection is achieved by way of a short-range connection.

37.   The method of claim 36, wherein the short-range connection is an infrared connection.

38.   The method of claim 23, wherein the lifetime is a period of time measured from a predetermined starting time.

39.   The method of claim 38, wherein the predetermined starting time is the time of downloading the chosen application.

40.   The method of claim 23, wherein the lifetime is a predetermined number of downloads.

41.   Apparatus comprising:

a network infrastructure configured to communicate with at least one mobile terminal;

an application database containing at least one downloadable application, the application having a user-selectable variable lifetime during which the application is permitted to remain executable by an identified user;

a downloading server configured to communicate through the network infrastructure and configured to detect a request containing information identifying a user to download a chosen application of the at least one application contained in the application database, the downloading server being further configured to obtain the application from the application database, and to download the application to the at least one mobile terminal; and

an application-license database coupled to the downloading server, the application-license database configured to store the selected variable lifetime and the user-identifying information;

wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application, wherein the downloading server is further configured to download said application if the user has application lifetime remaining for the requested application.

42.   The apparatus of claim 41 wherein said downloadable application is preprogrammed with the selected lifetime, wherein the downloadable application is configured to delete itself from the at least one mobile terminal when the selected lifetime expires.

43.   The apparatus of claim 41, wherein the selected lifetime expires as a function of a selected number of transactions.

44.   The apparatus of claim 41, wherein the lifetime expires as a function of a selected time.

45.   Apparatus comprising:

a central processing unit (CPU);

a memory unit coupled with the CPU and configured to store at least one application;

an application requestor coupled with the CPU and configured to generate requests to download a variable-lifetime application from an application database;

a lifetime selector coupled with the CPU and configured to select a variable lifetime applicable to a downloaded application;

a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application; and

an application disabler coupled with the CPU and configured to disable an application;

wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains.

46.   The apparatus of claim 45, wherein the application disabler is configured to disable an application when the associated lifetime has expired.

47.   The apparatus of claim 45, wherein the application disabler is configured to delete an application with lifetime remaining in order to free storage space in the memory unit.

48.   The apparatus of claim 45, wherein the application requester is operable to request a previously-downloaded application for which at least a portion of the associated lifetime remains.

49.   The apparatus of claim 45, wherein the memory unit also stores lifetime indicia associated with downloaded applications.

53.   A method comprising:

receiving a selected choice of a first application from a mobile terminal, the first application being one of a plurality of applications; and

receiving the first application via a wireless network, the first application being configured to become unavailable for use on the mobile terminal upon either

expiration of a time period selectable by a user of the mobile terminal, or

use of the first application a number of times selectable by a user of the mobile terminal.

54.   The method of claim 53, wherein the wireless network is a cellular communication network.

55.   The method of claim 53, wherein the wireless network comprises short-range wireless communication.

56.   The method of claim 55, wherein the short-range wireless communication comprises an infrared connection.

57.   The method of claim 53, further comprising receiving the user-selected time period for the first application from the mobile terminal.

58.   The method of claim 53, further comprising receiving the user-selected number of times the first application may be used from the mobile terminal.

59.   The method of claim 53, wherein the first application is configured to become unavailable by becoming non-functional.

60.   The method of claim 53, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself.

61.   The method of claim 60, wherein the first application is configured to delete only executable code.

62.   The method of claim 60, wherein the first application is configured to retain customized settings in the mobile terminal.

63.   The method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application; and

again receiving the first application if time remains in the predetermined time period.

64.   The method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application; and

again receiving the first application if the first application has been used less than the predetermined number of times.

65.   The method of claim 53, further comprising:

paying for the first application, wherein the amount of said payment is based on either the user-selectable time period or the user-selectable number of times.

66.   The method of claim 53, further comprising:

making an initial payment for the first application;

subsequently receiving another selection of the first application;

again receiving the first application if there is time remaining in the user-selected time period; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment.

67.   The method of claim 53, further comprising:

making an initial payment for the first application;

subsequently receiving another selection of the first application;

again receiving the first application if the first application has been used less than the user-selected number of times; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment.

68.   The method of claim 53, further comprising:

determining, at each attempt to use the first application, whether time remains in the user-selected time period, and

deleting the first application if time does not remain in the user-selected time period.

69.   The method of claim 53, further comprising:

determining, at each attempt to use the first application, whether the first application has been used less than the user-selected number of times, and

deleting the first application if the first application has been used the user-selected number of times.

70.   The method of claim 53, wherein said receiving a selected choice step comprises selecting a link at a website.

71.   The method of claim 53, further comprising deleting a pre-existing application to create memory space for the first application.

72.   The method of claim 53, wherein the first application is a game.

73.   The method of claim 53, wherein the first application contains executable digital information.

74.   A method comprising steps of:

receiving a choice of a first ringing tone at a mobile terminal, the first ringing tone being one of a plurality of ringing tones; and

receiving the first ringing tone via a wireless network, the first ringing tone being configured to become unavailable for use on the mobile terminal upon either

expiration of a user-selectable time period, or

use of the first ringing tone a user-selectable number of times.

75.   The method of claim 74, wherein the wireless network is a cellular network.

76.   The method of claim 74, wherein the wireless network comprises short-range wireless communication.

77.   The method of claim 76, wherein the short-range wireless communication comprises an infrared connection.

78.   The method of claim 74, further comprising receiving at the mobile terminal the user-selectable time period for the first ringing tone.

79.   The method of claim 74, further comprising receiving at the mobile terminal the user-selectable number of times the first ringing tone may be used.

80.   The method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone; and

again receiving the first ringing tone if there is time remaining in the user-selected time period.

81.   The method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone; and

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times.

82.   The method of claim 74, further comprising:

paying for the first ringing tone, wherein the amount of said payment is based on either the user-selected time period or the user-selected number of times.

83.   The method of claim 74, further comprising:

making an initial payment for the first ringing tone;

subsequently receiving a re-selection of the first ringing tone;

again receiving the first ringing if there is time remaining in the user-selected time period; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment.

84.   The method of claim 74, further comprising:

making an initial payment for the first ringing tone;

subsequently receiving a re-selection of the first ringing tone;

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment.

85.   The method of claim 74, wherein said choosing step comprises selecting a link at a website.

86.   Apparatus comprising:

a memory; and

a central processing unit (CPU), wherein the apparatus is configured to perform

transmitting over a wireless communication network a choice of a first application, the first application being one of a plurality of applications,

receiving the first application via the wireless network, the first application being configured to become unavailable for use on the apparatus upon either

expiration of a user-selectable time period, or

use of the first application a user-selectable number of times, and

storing the first application in the memory.

87.   The apparatus of claim 86, wherein the wireless network is a cellular communication network.

88.   The apparatus of claim 86, wherein the wireless network comprises short-range wireless communication.

89.   The apparatus of claim 88, wherein the short-range wireless communication comprises an infrared connection.

90.   The apparatus of claim 86, wherein the mobile terminal is further configured to transmit a selection of the user-selectable time period for the first application.

91.   The apparatus of claim 86, wherein the mobile terminal is further configured to transmit a selection of the user-selectable number of times the first application may be used.

92.   The apparatus of claim 86, wherein the first application is configured to become unavailable by becoming non-functional.

93.   The apparatus of claim 86, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself.

94.   The apparatus of claim 93, wherein the first application is configured to delete only executable code.

95.   The apparatus of claim 93, wherein the first application is configured to retain customized settings in the apparatus.

96.   The apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application, and

again receive the first application if time remains in the user-selected time period.

97.   The apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application; and

again receive the first application if the first application has been used less than the user-selected number of times.

98.   The apparatus of claim 86, wherein the apparatus is further configured to

determine, at each attempt to use the first application, whether time remains in the user-selected time period, and

delete the first application if time does not remain in the user-selected time period.

99.   The apparatus of claim 86, wherein the apparatus is further configured to

   determine, at each attempt to use the first application, whether the first application has been used less than the user-selected number of times, and

   delete the first application if the first application has been used the user-selected number of times.

100. The apparatus of claim 86, wherein said transmitting a choice comprises transmitting a selection of a link at a website.

101. The apparatus of claim 86, wherein the first application is a ringing tone.

102. The apparatus of claim 86, wherein the first application is a game.

103. The apparatus of claim 86, wherein the first application contains executable digital information.

EVIDENCE APPENDIX
37 C.F.R. § 41.37(c)(1)(ix)

NONE.

RELATED PROCEEDINGS APPENDIX
37 C.F.R. § 41.37(c)(1)(x)

NONE.